P. F. 10 & 96

G. R. S. IX-5]

Previous references.

1894-95

191 .

(L. R.)

File No. 96 & 94.

Serial Nos. 1 to 9

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 to 9.

In ~~Part~~ B for September 1897.

SUBJECT.

Appeal of Hutchaiah & Jothaiah, Chickmagalur Taluk regarding the fine imposed on the petitioner for the encroachment of land of Mahole.

W D 1250—G P B—30,000 - 28-1-19

condemned as Indexed

Before the Government of ~~His Highness the Maharaja of~~ Mysore.

Appeal No. 157 of 94-95.

Appellant. Vs. ~~Respondent.~~

Kuchu Sab.
represented by
M/s S. Ramaswamiyar

Notice served
13. 8. 95.
~~Decision~~
appeal by M/s K. T. Narasimhaiya
appellant - Order reversed
BO. 13/8

The facts of this case are fully stated in the Asst Comrs letter No. of and are briefly as follows:-

The Pctr owned Survey No. 62 in the village of Doddahalli and adjoining it is the reserved forest No. 29 of the Melkote village. The Pctr included a little more than one acre of the latter in his holding. This he admitted but refused when it was. The Jammabandi Officer fined him fifteen Rs and ordered him to give the land encroached upon. Instead of obeying this order he

2

extended his encroachment and dug up a trench. It was also found that three of the boundary marks were missing & that a new earthen bandh had been put up. The matter came up before the Dy Coll. and he decided that the Petr should pay up the assessment at 10 per acre of the whole formal number exceeding 300 acres. He also found him guilty of having removed three stones each and for each of them fined the Petr at the rate of fifty rupees. Thus the Petr's fine amounts in all to (324 + 150 =) 474 rupees. The exact extent encroached upon by the Petr in the 2nd year in survey 2:29 is not clear from the records of the case. He has been ordered to pick the land.

Sec 133 of the Land Rev Code is as follows:-

"Any person convicted, after a summary enquiry before the Dy Coll. of wilfully erasing removing or injuring a boundary mark, or unauthorizedly erecting a boundary mark, shall be liable to a fine not exceeding fifty ~~Rs~~ for each mark so erased removed injured or erected.

The Dy Coll has written an explicit order and seems to have heard the ~~Petr~~ Respondent a Pleader for the Petr. The rest of the facts have

a which also supports the conviction

been either rejected, upon by
the Subordinate Officers or are
mentioned in the Magazines
executed upon them. The Dy
Commr does not seem to have held
any ~~Enquiry~~ enquiry into these
matters. S. 203 of the Cr. P. Code
lays down the procedure to
be observed in a "Summary Enquiry"
according to which the "presiding
Officer shall himself, in any such
enquiry proceeds, record a minute
of the proceedings in his own hand
in English or the language, embracing
the material averments made
by the parties interested, the material
points of the evidence, the decision
and the reasons for the same."
The Dy Comr has not followed
this procedure and the facts therefore
remains that no legal evidence
has been recorded by the Dy Comr
to show that any stores are missing.
This is an irregularity which
affects the essence of the case and
in the absence of legal evidence the
only conclusion which can be
arrived is that there is no legal proof
to convict the acts of an offence

under Sec 133.

~~Apart from~~

The whole defect in ~~the~~ this report is ~~must be~~ observed that the finding against the Petr is based entirely upon the supposition, probability that it is the letter alone & no one else ~~who~~ could have any interest in it ~~that~~ there alone. ~~No fact~~ ~~Could~~ ~~Counsel~~ ~~that it is proved~~ ~~that no one else had any motive~~ ~~to write it~~ ~~Whether it is true~~ ~~or not~~ ~~that the duty of the~~ ~~Petr~~ to take care of, & maintain them shows it can be argued with equal force

The only course left open to the Govt Respdt is to reverse the conviction and ~~leave it to the~~ ~~Respdt to accept proper treasury~~ ~~of the Petr~~ to order the refund of the fine.

Regarding the encroachment it is clearly established ~~and~~ may admitted by the Petr himself that he did include a portion of Survey No 29. Ignorance of his own limits is inadmissible The Petr has shown a contemptuous disregard of the local authorities in not only refusing to give

the Crops land in the first year
and in breaking in his ~~ne~~ last
and digging a trench with the
result of including more
land in the second year -
The Pet^r does no doubt, under
the circs, deserve exemplary
punishment, and his eviction
from the land on which he has
evidently spent much labour
& capital will ~~be~~ in his case
be a very severe punishment.
From the records of 1880 it appears
that the Pet^r is a poor man and
the fine of £ more than 300 ~~£~~
inflicted upon him appears
too heavy. This fine is reduced
to thirty pounds. With this
modification the order of the
Dist Court is ~~affirmed~~ confirmed &
this appeal dismissed - Pet^r
must not be allowed to obtain
even by Default any benefit of
the Journal 2:29.

William Smith

20th Aug 1896

Fort Worth D.C.

Rule & order

Redraft [illegible]

W

Pet 1611 A.S. 157 of 94-

L. R. 96-94-2

MYSORE DEWAN'S OFFICE,

(2) PETITION DEPARTMENT.

OFFICIAL MEMORANDUM.

The accompanying Petition No. 2
dated 15.4.95 received at the
Dewan's Office from Hoochoo Sa
of Soladalu, Chief
magistr Salute. app
ing against the D
to remit a fine
him Rs 150/- for alleged
Thanet dacoits &
is forwarded, together with its two
enclosures, to the Dy. Comm
Mysore District for
submission of the
entire proceedings
together with a report
of the facts of the case
and on the points urged
in the petition.
2. The petition with its
enclosures should be
returned

By Order,

Draft KK 4/5

BANGALORE,
26/4/1895 } Chief Secretary

Hoochoo Soladalu IKR 30/4

M.G.C.P.B.—19-2-95—1,000

L.R 96-94-16 (1)

Gen. Serial No. 3221

1895

No. 2721

Name of Petitioner. Hadiya Lal Upadhya

Village. Jaitpur } by Rai Bhimsen
Taluk. Chitrakoot } Lingat - Award
District. Kaitar } Bangalli

Date of Arri. 15-4-95

Date of Receipt. 16-4-95

Date of Disposal.

No. of Enclosures. 2 Judicial

ABSTRACT.

Appeals against the order of Pt. Jeet Kaitar District Jr. of 16-2-95 fixing Rs. 150/- for the alleged removal of Kaitar Stone dues:

Rs. Pounds appeal against appeal against order in Eighth:

The appellant having the case may by pleader and the appeal allowed to Kaitar Appeal Court and Rs. Pounds Rs. Pounds - and that pleader against appeal the Jeet Rs. Pounds to Rs. Pounds against order appeal.

19/4

Submitted Rs. Councillor

This is a Council case & falls under clause 10 of the Oudh Rules dated 17 May 1889. Rs. pays that under the Rs. Council to have been a council to have the Rs. Council order Rs. Rs. against pleader Rs. Rs. against this appeal-dismissed by this appeal-

28/22/4

Rs. Councillor record

Appeal for Rs. Pounds Rs. Pounds against order dismissed Rs. Pounds

Draft 1 MR 30/4

Not accepted

26/4/95

Gen. Serial No. 81.]

REVENUE DEPARTMENT
Gl. No. 412
No.
18 JUL. 95
E. 35
DEWAN'S OFFICE

18

From The Deputy Commissioner Kadur District

To The Secretary to the Government of Mysore. Revenue

Dated 15th July 95

Despatched 16 July 95

Received

Enclosures—No. 2 & Spike "A"

General No. 401 / 395-96
No.

In reply to this official memo No Fe. 1611 dated 20th April 95, forwarding for report petition from one Basappa Valad of Jolibal village, Chikmagalur Taluk, praying against the encroachment alleged to be made by him for removal of certain boundary marks and unauthorized cultivation in survey no. 82, Jonal of the Eriyole village of the same Taluk, I have the honour to submit the Vernacular, record connected with the case together with a memo explaining facts and the points urged in the petition.

2. Pending the final decision by Government in the case

L. R. 96-94-3

Ref to Rr

Fr 17/7/95

18/7 Issued to 13th August

Petition to be sent

20/7 Issued 21/7

Memo.

Re unauthorised cultivation and destruction of boundary marks by one Hoochoo Sabi of the Goldhal village, Chikmagalur Taluk, in gomal Survey No 29 of the Elehole village of the same Taluk.

The following are the facts of the case:—

25th August 1885. 1 Hoochoo Sabi darKhasted for and obtained possession of goldhal Survey No 62, coffee, measuring 8 acres and 26 guntas, for Re 1 in public sale held in May 1885. Vide original darKhast record put up with this memo.

29th October 1892. 2. The Shanbhog of the above two villages reported to the Amildar that one Hempanna unauthorisedly entered upon a portion of Survey No 29, gomal, of the Elehole village, stacked grass, and also made a 'Kana' on it, and also that Hoochoo Sabi encroached

upon another portion of the same Elekolé survey no 29, adjoining his survey no 62 of Goldhal village above referred to, and cultivated it with coffee.

3. The 1st case in which Hempanna was concerned was disposed of by the Jamabandi Officer Mr N. Ramaswamaiengar, with a remark that as he vacated the ground no order was called for but that he might apply for a piece of land in the usual course.

4. As regards the 2nd case relating to the unauthorised cultivation of Hoochoo Sabi the Hobli Shekdar ascertained that he had removed 3 boundary stones, erected an additional earthen boundary mark and cultivated a piece of survey no 29 in the Elekolé village The Shekdar further stated that owing to the removal of these boundary marks

orders have been sent to the Auditor to stop taking measures for the recovery of the fine inflicted on the appellant.

3. The petition received with the memo under reply is returned, as desired, with its enclosures.

M. Singh

for Deputy Commr
& Addl Secretary

he was unable to make out the exact extent of the area encroached upon unless Kaccha Gali and land, Survey Nos of Jalalia Village was measured fully.

17th March, 1893. 5. The Circle Sub-Inspector who did the Salem Jamabandi in 1892-93, inspected the ground in question and stated that Kaccha Gali had no doubt encroached upon 2-35 cents of garai land, viz: 2 of Class I and planted 5 or 6 hundred coffee plants during the last year with a number of plantain trees, and also cleared jungle to some extent. The Circle Sub-Inspector also recommended that as the man exceeded his boundary mark, he be fined and ejected from the land (garai).

14th May 1893. 6. The Revd. Parthasarathy the then General Secretary, Communications, who conducted the Jamabandi of the Chinnagalur Taluk

"Sivaji Ramchendra, Shekdar of Hadagalnad magni, is directed to go to the village to find out after cutting the bushes whether two other stones have been removed or not, and also to report whether a band has been unauthorisedly erected by the aforesaid Hoochoo Sabi."

17th may 1893. He further ordered.—

"Read Shekdar Sivaji Ramachendra's (he was a measurer in the Survey department) report. Hoochoo Sabi has encroached on gomal no 29 of Elehole. He is fined Rs 15/. in addition Rs 1-12-0 assessment (since paid up) for this unauthorised encroachment on land set apart for special purpose. He should be ejected from this encroachment. As the portion of Elehole gomal no 29, adjoining Survey no 62, Joldhal, forms part of

"a detached portion of gonal no 29, Hoochoo Sahe may be directed to darkhast for this portion. The Amildar may then make his own recommendation. Three land stones have been evidently removed by Hoochoo Sahi and a fresh land has been erected. A separate report with the available evidence should be reported for punishing him." - Vide original order in Sakhar list of 1892-93 in which the Shekdar's and Sheristedar's reports appear.

7. During the jamabandi of the following year, viz: 1893-94, the Shekdar again brought this case on the Sakhar list and said that Hoochoo Sahe had not only failed to give up the portion unauthorised cultivated by him last year but that he had also added some more land under

in 1892-93, traced in order to follow on the Eastern side of the Victoria village. Vide original plan attached hereto.

The Chiefs, referred to as three (band), stones on the western boundary of Survey No 2 have disappeared. Most probably have been wilfully removed. But during the inspection of Sahib Ghamatia Rajkumar Rao it was observed that a stone had disappeared. This has been evidently removed to encroach on ground, map of Victoria. By actual measurement it has been ascertained that Hoseins Sahib has unauthorisedly cultivated 1 acre and 25 guntas of aforesaid ground map. He has planted two portions. He has attempted to enclose more land evidently to encroach upon it.

cultivation and fined a
trifle, &c. The Dubash pe-
titioner reported that some 2
or 3 men have put in ap-
plications for pieces of
land out of the general
poag, including the portion
encroached upon by Hoche
Lévi. Vide Tamil letter dated
with the Vernacular papers.

12th May 1894. 5. During the jamabandi
of 1893-94 by me, Ramas-
wamanaicken Hochedali
prayed that the District
Surveyor should be direct-
ed to measure survey No 62,
Poldhal, in his field, at
his expence, as he consid-
ered that the alleged portion
of encroachment fell with-
in that number, and added
that the estimated it under
the instructions of the Head
Srarkar of the village Venkat-
subbaiya (deceased)

1st June 1894. 9. By Ramaswamanaicken
accordingly remitted the
necessary measurement
to be done by the District

orders were passed.

"As regards the boundary stones, I cannot conceive how they could have been removed by anyone but the holder Hoochoo Sale, as it could not have been anyone else's interest to do so, the land being forest prior to his taking it up. No plea is set forth by the Pleader on this count beyond that he knows nothing about the stones. I therefore direct that under Section 133 Land Revenue Code, Hoochoo Sale be fined Rs 50/- for each stone removed, i.e. Rs 150/- for the three stones, and that he do replace the same in their original places".

2. "As regards the encroachment upon Survey No 29 of Elehalé village, which is gomal unassessed and measuring a 3 23-10 gunthas is reported to be forest and fit for coffee cultivation,

"I direct that Hoochoo Sabe do pay the assessment of the whole survey number for one year at Re 1 per acre under Section 59 of the Land Revenue Code and that he be summarily evicted from the present unauthorised holding in Survey no 29, and also that he do fill in the trench dug on Survey no 65 of the goldhal village."

13. The following is the report on the points urged in the appeal petition preferred by Hoochoo Sabi to Government in his petition dated 15th April 1895.

In para 3 of the appeal petition the appellant throws the fault, for which he stands punished, on the village Shanbhag who died about 3 years ago. The appellant when asked by the Talik Shirastedar did not put forward the above plea, but admitted the

Surveyor on receipt of the
amount from the petitioner

10 Assumption 23-4-9 1st November 84
having been received and
Rejoin dejoicth, the District
Surveyor was on 3rd November
1884 acted to do the needful.

11. The Surveyor, after car-
fully completing the mea-
surement as required by
the said Pritchard, re-
ported that he had en-
croached upon the gonal
land, viz: Survey No 2 of the
Elehal village and a little
bit each of Jaldial No's
adjoining his No's of the
Jaldial village, and that
5 boundary stones had
been removed. Vide sketch
and his detailed report
dated 7th January 85 and
annexed with the Canara
proceedings.

12. At the time of fixing the 5th February 85
Jamabandi for the year
1884-85 the following
orders

unauthorised cultivation and denied all knowledge of the removal of boundary marks. Vide his statement dated 7th March 1893. It was for the first time that he in this petition dated 2nd May, 89/7 to Mr. D. Pannambalam, tried to justify his action stating that he acted under the information given him by the deceased Kiriwina and it may be safely concluded from this that the rest of the applicant's case are after thought, as if true, he would surely have urged it in the first instance, and as a matter of fact some documentary evidence would be forthcoming in the record.

2. As regards the 2nd of the appellant's petition, requiring the demarcation of 5 acres including the alleged encroached portion

the appellant is at liberty to apply for the same and get it under the Office Rules.

14. The other paras in the appeal petition call for no remarks.

Chikmagalur
8th July 1965

for Deputy Commissioner
Chikmagalur

without any evidence to show that the appellant committed the alleged offence.

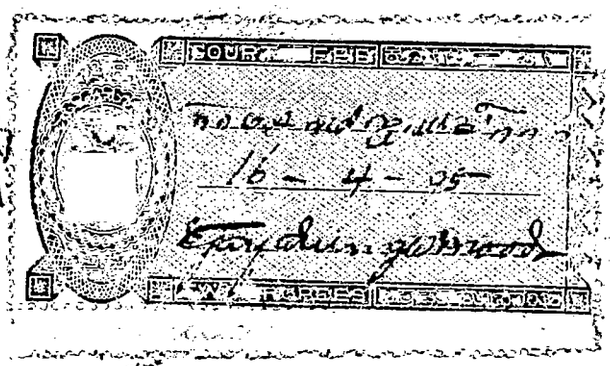
23

3. When Survey no. 62 was put in possession of the appellant about 10 years ago the then Shanbogue Venkatsubbaiya pointed out to the appellant the entire portions marked A, B, F, J as forming Survey no. 62; and the applicant began cultivating coffee since then.

4. When the appellant was put in possession of the land, it was overgrown with thorny shrubs and he had to improve the same at a heavy cost.

5. There was no voluntary or wilful encroachment by the appellant of a portion of No. 29 as held by the Deputy Commissioner, and the punishment awarded to the appellant on this head is very severe and it is also opposed to the Rules.

6. Although the portion alleged to have



2-2

Sent 1/21

Entered stamp & fee

16/4/95

MYSORE DEWAN'S OFFICE.
PETITION DEPARTMENT.
REG'D. NO. 2721/R
DATE 16-4-95

Before the Government of Mysore
Revenue Appeal No. of 1894-95

Appellant —
Muchoo Sab, residing
in the village of Jola-
-dalu, Amur Magani
Chikkamagalur Taluk.

The appellant most respectfully begs
leave to appeal to the Government against
the order of the Deputy Commissioner,
Kadur, dated 6th February 1895, for
the following reasons: —

1. The alleged removal by the appellant
of Bandh Stones from the positions marked
K. L & M. to the points A. B & C has not been
made out.

2. The Deputy Commissioner erred in
convicting the appellant and in inflict-
-ing on him a heavy fine of Rs. 150/-
without

have been encroached upon in Sur-
-vey No. 29 cannot be marked out
Separately. Yet the divisible area,
at least 5 acres, may be marked out and
granted to the appellant under the
coffee rules, keeping from him at the
Same time Kandayam on the area
actually in his possession from the
date of his occupying the Same.

7. The order of the Deputy Commissioner
to evict the appellant from the portion
alleged to have been encroached upon
is very prejudicial to the appellant,
as there are about 2000 coffee plants
about 7 or 8 years old on the portion
in question, and as the appellant
will be Subjected to a heavy loss
thereby.

8. The Deputy Commissioner erred
in acting upon the alleged Maha-
-zars got up for the occasion by
the

ಕಾಂಚನಾಲಿ ಶಾಮಯ್ಯಗಾರು
16 - 4 - 95
Gayarungayyanavaru

Bell
Petition filed 16/4/95

ವಕೀಲರವರಿಗೆ ಅಲಂಚಿ ಕೊಟ್ಟಿದ್ದ ಒಕ್ಕಲತ್ತು
ಕೋರ್ಟಿಗೆ.

ಸನ್ 1894-95ನೇ ಇಸವಿ ಅಪೀಲು ನಂಬರ್

ಅಪೀಲುದಾರ
ಪ್ರತಿವಾದಿ.

ಚಿಕ್ಕಿಶೆಟ್ಟಿಯವರಿಗೆ ನಾನು ಅಲ್ಲದೆ
ಅವರಿಂದ ಅಲಂಚಿಗೆ ತೆಗೆದುಕೊಂಡಿರುವ ಅಪೀಲು
ನಂ. ಸಂಬಂಧದಲ್ಲಿ ಕೆಲಸ ಮಾಡಲು
ಅಪೀಲುದಾರರಿಗೆ ವಕೀಲರನ್ನಾಗಿ
ಮಾಡಿಕೊಂಡಿದೆ.

ಅಪೀಲುದಾರ

ಬರೆಸಿ ಕೊಟ್ಟ ವಕಾಲತ್ ನಾಮೆ.

ಈ ಮೊಕದ್ದಮೆಯಲ್ಲಿ ನನ್ನಪರವಾಗಿ ಕೋರ್ಟಿಗೆ ಹಾಜರಾಗಿ ಅರ್ಜಿ ವಗೈರೆ ಕೊಟ್ಟು ವಿವಾದಿಸಿ ಫೈಸಲ್ ಕೊಂಡತಕ್ಕ ಬಗ್ಗೆ, ಮತ್ತು ನನಿಗೆ ಸಲ್ಲತಕ್ಕ ದಿಕರಿ ಮೊಬಲಗು ದಸ್ತೈವಜು ವಗೈರೆ ತೆಗದುಕೊಂಡು ರಶೀದಿ ಕೊಡುವದಕ್ಕೂ ಸಹಾ ತಮಗೆ ಅಧಿಕಾರ ಕೊಟ್ಟಿದ್ದೇನೆ. ಅದ್ದರಿಂದ ತಾವು ನನಿಗೋಸ್ಕರ ಕೋರ್ಟಿಗೆ ಹಾಜರಾಗಿ ನಡಿಸುವ ಎಲ್ಲಾ ಕೆಲಸಗಳನ್ನು ನಾನು ಖುದ್ದು ಇದ್ದು ನಡಿಸಿದಂತೆ ಒಪ್ಪುತ್ತೇನೆ.

ತಾರೀಖು 15ನೇ ಏಪ್ರಿಲ್
ಸನ್ 1895ನೇ ಇಸವಿ.

ರುಜು ಲಿಂಗಪ್ಪಯ್ಯನವರು

ಅಂಗೀಕರಿಸಿ ಇರುತ್ತೇನೆ.

Chikkasomanna
Appellant

ಈ ವಕ್ಕಾಲ್ತ್ನಾಮೆ ಕೊಟ್ಟವರು ನನಗೆ ಪರಿಚಯಸ್ಥರು ನನ್ನ ಸಮಕ್ಷಮ ಇದಕ್ಕೆ ರುಜುಮಾಡಿ ಇದ್ದಾರೆ. ಆದ್ದರಿಂದ ನಾನು ಸರ್ಟಿಫೈ ಮಾಡಿದ್ದೇನೆ.

ಈ ವಕ್ಕಾಲ್ತ್ನಾಮೆ ಕೊಟ್ಟವರು ನನ್ನ ಸಮಕ್ಷಮ ಇದಕ್ಕೆ ರುಜುಮಾಡಿ ಇದ್ದಾರೆ. ಆದ್ದರಿಂದ ನಾನು ಸರ್ಟಿಫೈ ಮಾಡಿದ್ದೇನೆ.

ಟಿ. ರಾಘವಾಚಾರ್ರಿಗಾಗಿ ಬೆಂಗಳೂರು ವಿಚಾರ ದರ್ಪಣ ಪ್ರೆಸ್‌ನಲ್ಲಿ ಮುದ್ರಿಸಲ್ಪಟ್ಟಿತು.—೧೮೯೫.

the opponents of the appellant, which are not legally admissible in evidence without proof - 25

9. The order of the Deputy Commissioner entails the forfeiture of almost the whole of the appellants property, and the Deputy Commissioner has not properly exercised the discretion vested in him in enforcing the provisions of the Land Rev. Code.

10. In Conclusion the appellant prays that the order of the Deputy Commissioner may be reversed, and the appellant allowed to retain possession of the Land on reasonable conditions.

11. The appellant further prays that pending disposal of this appeal, the Deputy Commissioner may be directed not to execute the order under appeal.

G 23 of 1926

Dated
15th April 1895

Commissioner
for the appellant

2 drafts in Bk for Mr C

(854) 27

Proceedings of the Govt of Bengal

L.R. 96-94-4

Read:-

(1) Petition of appeal No 2721/57 of 1894-95, presented by Mucha Sah of Jolidiah, Bhitmapalan Zaluk, against the order of the Deputy Commr, Khasia District fining Petitioner for encroaching upon Survey No 27 of Ilchole, and for removing certain boundary stones.

(2) Memo and records received with the Khasia Deputy Commr's docket No 40 dated 15th July 1895.

— 4 —

Order. No 2495-502 / F.S. 10-96.

Enc: one Ver: file. Dt 24-9-96.

The facts of this case are fully stated in the memo received with the Deputy Commissioners

slines were missing, and that a new earthen bandh had been put up. The matter came up before the Deputy Commissioner, and he decided that the Petitioner should pay up the assessment at Re 1 per acre of the whole formal number extending to 300 acres. He also found him guilty of having removed three slines, and for each of them fined the Petitioner at the rate of fifty rupees. Thus the Petitioner's fine amounts in all to (324+150 =) 474 rupees. The exact extent encroached upon by the Petitioner in the second year in Survey No 29 is not clear from the records of the case. He has been ordered to quit this land.

How 300 acres = 300 Rs ?
real acres 323-10-
amt. actually 323-4-

Section 133 of the Land Revenue Regulation is as follows:-

"Any person convicted, after a summary enquiry before the Deputy Commissioner, ... of wilfully erasing, removing or injuring a boundary mark or unauthorizedly erecting a boundary mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased removed injured or erected."

The Deputy Commr has written an English order and seems to have heard one Sinappa, a Pleader for the Petitioner. The rest of the facts relied upon for supporting the conviction have been either reported upon by subordinate officers, or are mentioned in the Mahazars executed before them. The

Deputy

docket No 40 of 15th July 1895;
and are briefly as follows:—

The Petitioner owned Survey
No 62 in the village of
Joladhal, and adjoining
it is the reserved gomal
No 29 of the Dhond village.
The Petitioner included a
little more than one acre
of the latter in his holding.
This he admitted, but
refused to give it up.
The Jamal-andi Officer
fined him fifteen rupees
and ordered him to quit
the land encroached
upon. Instead of obeying
this order, he extended his
encroachment and dug
up a trench. It was
also found that three
of the boundary-stone marks

stones

Deputy-Commissioner does not seem to have held any enquiry into these matters. Section 203 of the Land Revenue Regulation lays down the procedure to be observed in a "Summary Enquiry", according to which the presiding officer shall himself, as any such enquiry proceeds, record a minute of the proceedings in his own hand in English or Kannada, embracing the material averments made by the parties interested, the material parts of the evidence, the decision and the reasons for the same." The Deputy Commissioner has not followed this procedure, and the fact therefore remains that no legal evidence

has been recorded by the Deputy Commissioner to show that any claims are missing. This is an irregularity which affects the essence of the case, and in the absence of legal evidence, the only conclusion which can be adopted is that there is no legal proof to convict the Petitioner of an offence under Section 133. The only course left open for the Government to follow is to reverse the conviction and order the refund of the fine.

Regarding the encroachment, it is clearly established, nay admitted by the Petitioner himself, that he did include a portion of Survey No. 129. The plea

plea of ignorance of his own limits is inadmissible. The Petitioner has shown a contemptuous disregard of the Local authorities in not only refusing to give up the excess land in the first year, but in permitting in his unlawful act and digging a trench with the result of including more land in the second year.

The Petitioner does, no doubt, under the circumstances, deserve exemplary punishment, and his eviction from the land on which he has evidently spent much labour and capital will, in his case be a very severe punishment. From the records of 1885, it appears that the Petitioner is a poor man and the fine of more than Rs 300 inflicted

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1896-97

GOVERNMENT OF MYSORE

PETITION

PROCEEDINGS

Dated 2nd September 1896

No. 2495-502
Pet. F. 10-96

Communicating the remarks of Government in the matter of removal of boundary marks and encroachment on survey No. 29 in the village of Hebole, Chikmagalur taluk, by one Huchu Sab.

M.G.C.P.B.—23-9-96—120

READ :—

(1) Petition of appeal No. 2721—157 of 1894-95, presented by Huchu Sab of Joladhal, Chikmagalur taluk, against the order of the Deputy Commissioner, Kadur district, fining petitioner for encroaching upon survey No. 29 of Ilehole, and for removing certain boundary stones.

(2) Memo and records received with the Kadur Deputy Commissioner's docket No. 40, dated 15th July 1895.

No. 2495-502—Pet. F. 10-96, DATED, BANGALORE, 2ND SEPTEMBER 1896.

ORDER THEREON.—The facts of this case are fully stated in the memo received with the Deputy Commissioner's docket No. 40 of 15th July 1895, and are briefly as follows :—

2. The petitioner owned survey No. 62 in the village of Joladhal, and adjoining it is the reserved gomal No. 29 of the Ilehole village. The petitioner included a little more than one acre of the latter in his holding. This he admitted, but refused to give it up. The Jamabandi Officer fined him fifteen rupees and ordered him to quit the land encroached upon. Instead of obeying this order, he extended his encroachment and dug up a trench. It was also found that three of the boundary mark stones were missing, and that a new earthen bandh had been put up. The matter came up before the Deputy Commissioner and he decided that the petitioner should pay up the assessment at Re. 1 per acre of the whole gomal number extending to 300 acres. He also found him guilty of having removed three stones, and for each of them fined the petitioner at the rate of fifty rupees. Thus the petitioner's fine amounts in all to (324 + 150)=474 rupees. The exact extent encroached upon by the petitioner in the second year in survey No. 29 is not clear from the records of the case. He has been ordered to quit this land.

3. Section 133 of the Land Revenue Regulation is as follows :—

"Any person convicted after a summary enquiry before the Deputy Commissioner × × × × × × of wilfully erasing, removing or injuring a boundary mark or unauthorizedly erecting a boundary mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed, injured or erected."

4. The Deputy Commissioner has written an English order and seems to have heard one Sinappa, a Pleader for petitioner. The rest of the facts relied upon for supporting the conviction have been either reported upon by subordinate officers, or are mentioned in the mahazars executed before them. The Deputy Commissioner does not seem to have held any enquiry into these matters. Section 203 of the Land Revenue Regulation lays down the procedure to be observed in a "Summary Inquiry," according to which "the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceeding in his own hand in English or Kanarese, embracing the material averments made by the parties interested, the material parts of the evidence, the decision and the reasons for the same." The Deputy Commissioner has not followed this procedure, and the fact therefore remains that no legal evidence has been recorded by the Deputy Commissioner to show that any stones are missing. This is an irregularity which affects the essence of the case, and in the absence of legal evidence, the only conclusion which can be adopted is that there is no legal proof to convict the petitioner of an offence under Section 133. The only course left open for the Government to follow is to reverse the conviction and order the refund of the fine.

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Petition, dated 2nd September 1896.

5. Regarding the encroachment, it is clearly established, nay admitted by the petitioner himself, that he did include a portion of survey No. 29. The plea of ignorance of his own limits is inadmissible. The petitioner has shown a contemptuous disregard of the local authorities in not only refusing to give up the excess land in the first year, but in persisting in his unlawful act and digging a trench with the result of including more land in the second year.

6. The petitioner does, no doubt, under the circumstances, deserve exemplary punishment, and his eviction from the land on which he has evidently spent much labor and capital, will, in his case, be a very severe punishment. From the record of 1885, it appears that the petitioner is a poor man and the fine of more than Rs. 300 inflicted upon him appears too heavy. This fine is reduced to thirty rupees. With this modification the order of the Deputy Commissioner is confirmed and this appeal dismissed. Petitioner should not be allowed to obtain even by darkhast any portion of the gomal land No 29.

for *Secy. to Govt., Gen. & Rev. Depts.*

To—The Deputy Commissioner, Kadur district, with records.
The Deputy Commissioners of other districts.

Exd.—H.A.R.

3.

upon him appears to be heavy?
This fine is reduced to thirty
rupees. That the notification
the order of the Deputy Com-
missioner is confirmed and
this appeal dismissed. Petitioner
should not be allowed to
obtain even by Contempt-
any portion of the Journal
No 29.

Redraft
C2

Print

C2 9.9.

Secretary.

31/8

To
The Deputy Commr
Kadur District, with record

Deputy Commissioners
of other districts.

SV
mk 4/8.

Passed by Court
SVM
8/9.

References
BK
27/8/97

L.R. 96-94-6

1897

No. 529

Name of Petitioner Ankola Lab

Village Jolada'lu

Taluk Chickmagalur

District Kadu'r

Date of Arzi 14-8-97

Date of Receipt 18-8-97

Date of Disposal

No. of Enclosure Nil

~~B3 96~~ 2721 of 96.

P.T. 10-96

2

18 P.T. 10 96 on the subject is put up -

Disarranged.

9/97.

Submitted

BK

2-9-97

Whether for revision of ord order No 2495-502 of 24/9/96 P.T. 10-96

for the confirmation of the ord from Wh pet^r was ordered to be evicted out of time by about 8 months + 12 days.

Stamp sufficient.

Not a coomal case

Subd to 2nd Comaller

MM 4/9/97

Voids Weapon case -

Orders issued 7.9.97

Encs prep^d & put up

MM 10/9/97.

Abstract.

States that S. No. 62 was purchased by him in 1880 for coffee cultivation that in the act of improving the soil and planting Coffee thereon, about 36 guntas of land forming a portion of the form No. 29 of Ikehole were inadvertently included within the boundary of the said No. 62, that the fact was found out last year, and order No. 2721, of 1-9-96 was issued to him

from this office evicted,
the petr from the extra land thus
brought under cultivation;
that to give effect to the above
order, the Dfsmnt is insisting
upon the removal of the Coffee-plants re
from the said portion; and that
it is hard for him to pluck off
so many flowering plants
just at the time when they showed signs
Prays that the said 36 gunties
also may be given Him as a matter
of concession.

[illegible] 26/8/97 (Recd for advice 25/8/97)

No. 529

COURT FEE

EIGHT ANNAS

COURT FEE

EIGHT ANNAS

43

529 R

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L.R. 96-94-7